

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 710.

THE UNITED STATES, PLAINTIFF IN ERROR,

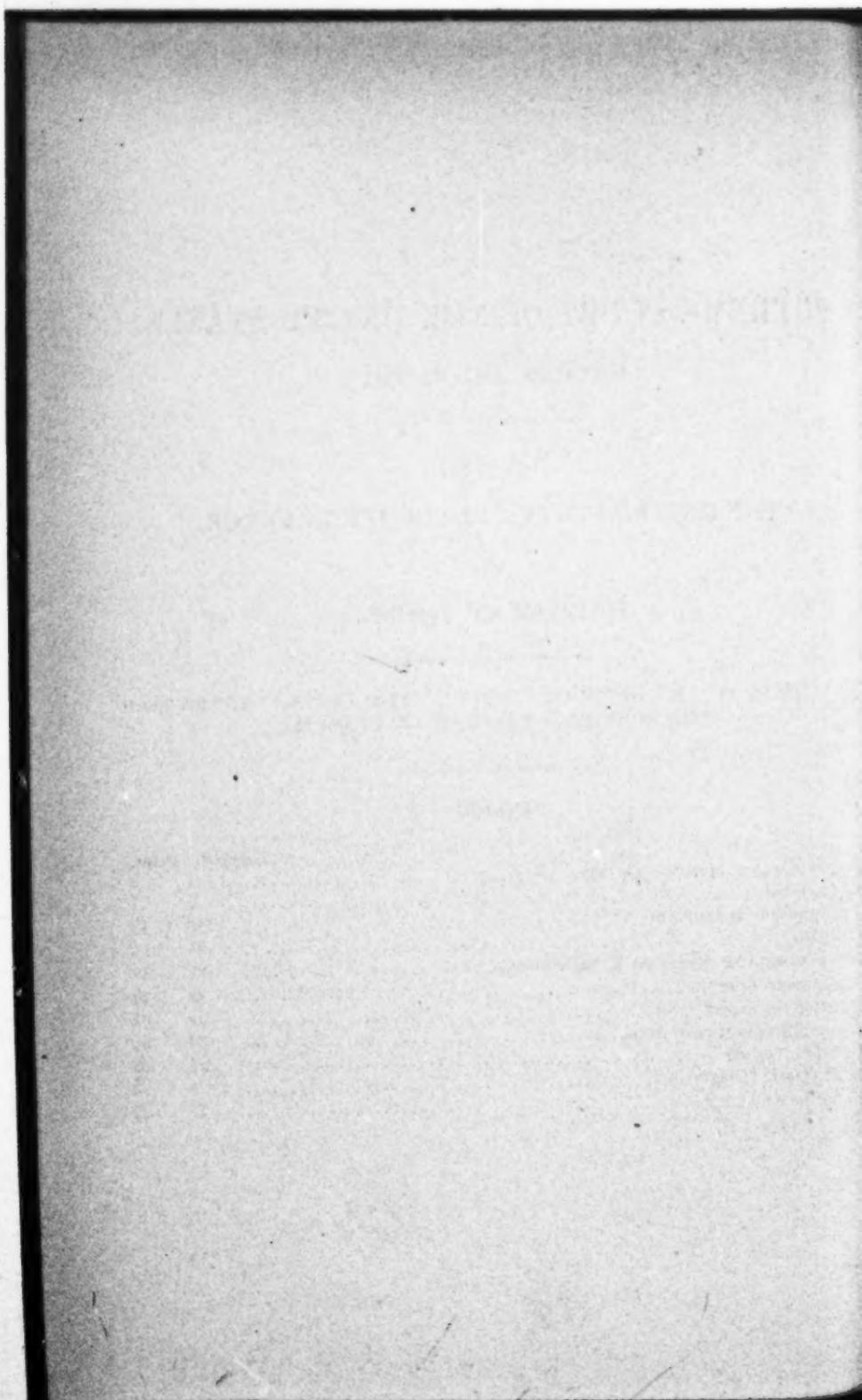
vs.

HARDAWAY YOUNG.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF ALABAMA.

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1 *Name of court, style of case, etc.*

UNITED STATES OF AMERICA.

District Court of the United States for the Southern District of Alabama.

THE UNITED STATES OF AMERICA

VERUS

HARDAWAY YOUNG.

June 17, 1913, indictment presented and filed charging defendant with using the mails in furtherance of a scheme to defraud in violation of section 215 of the Criminal Code of the United States; June 17, 1913, demurrers filed to said indictment; July 30, 1913, opinion and order by the court sustaining said demurrers, quashing said indictment and holding defendant under bond on file to answer another indictment if one presented; August 29, 1913, writ of error sued out by the United States as provided by the act of Congress of March 2, 1907, 34 Statutes at Large, page 1246.

The transcript of the record and proceedings under said writ of error being as follows:

Indictment.

Violation of section 215, Penal Code.

UNITED STATES OF AMERICA.

In the District Court of the United States for the Southern Division of the Southern District of Alabama. May term, 1913.

SOUTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION.

The grand jurors of the United States, chosen, elected, and sworn, in and for the Southern Division of the Southern District of Alabama, upon their oaths do find and present:

That on, to wit, the fifth day of May, A. D. 1911, within the county of Mobile, and within the Southern Division of the Southern District of Alabama, and within the jurisdiction of this court, and before the finding of this indictment, Hardaway Young, alias H. Young, whose name other than is herein stated is unknown to this grand jury, and late of the district and division aforesaid, did then and there devise and intend to devise a scheme and artifice to 2 defraud various banks, persons, firms, and corporations to this grand jury unknown, and particularly such banks, persons, firms, and corporations as might be thereafter induced by the said Hardaway Young, alias H. Young, through the firm of Hollingshead and Campbell, of New York City (said firm of Hollingshead and Campbell relying in good faith upon false and fraudulent statements

and representations made and to be made by the said Hardaway Young, alias H. Young, respecting the business affairs and financial condition of the Southern Hardware & Supply Company, a corporation engaged in the mercantile business at Mobile, Alabama, to purchase or loan money upon the notes of the said Southern Hardware and Supply Company, a corporation), out of their's, the said bank's, person's, firm's, and corporation's moneys, goods, and chattels, which said scheme and artifice to defraud was substantially as follows:

The said Hardaway Young, alias H. Young, was then and there the president of said Southern Hardware and Supply Company, a corporation engaged in the mercantile business at Mobile, Alabama, in said division and district. The said Hardaway Young, alias H. Young, desired to obtain loans of money for the said Southern Hardware and Supply Company, and to that end entered into negotiations with said firm of Hollingshead and Campbell, of New York City, which firm was then and there engaged in the money-brokerage business in the city of New York, State of New York, and in the business of inducing the banks, persons, firms, and corporations to purchase and loan money upon the notes and commercial paper of various persons, firms, and corporations engaged in the mercantile business. The purpose and intent of such negotiations so entered into by the said Hardaway Young, alias H. Young, with said firm of Hollingshead and Campbell, was to induce and cause the said firm of Hollingshead and Campbell to sell and dispose of notes of said Southern Hardware and Supply Company and to obtain money and credit for the said Southern Hardware and Supply Company upon the notes and other evidences of indebtedness of the Southern Hardware and Supply Company. The said Hardaway Young, alias H. Young, was then and there the president of the said Southern Hardware and Supply Company and was then and there authorized to cause and to cause to be prepared financial statements and statements of the business affairs and financial condition of the said Southern Hardware and Supply Company, and was further authorized to sign and endorse notes of the said Southern Hardware and Supply Company.

The said grand jurors do further find and present that it was then and there a part of the aforesaid scheme and artifice to defraud; that the said Hardaway Young, alias H. Young, for the purpose of inducing the said firm of Hollingshead and Campbell to recommend to various banks, persons, firms, and corporations that said banks, persons, firms, and corporations purchase notes executed and to be executed by said Southern Hardware and Supply Company, and for the purpose of inducing the said firm of Hollingshead and Campbell to sell and dispose of notes executed and to be executed by said Southern Hardware and Supply Company, and for the purpose of inducing the said firm of Hollingshead and Campbell to cause and persuade and influence various banks, persons, firms, and corporations to loan money upon notes executed and to be executed by the Southern Hardware and Supply Company, was to,

and did, for the purpose aforesaid, prepare and cause to be prepared and sent by and through the United States mail false and fraudulent statements of the business affairs and financial condition of the said Southern Hardware and Supply Company, which the said Hardaway Young, alias H. Young, was to, and did, represent to the said Hollingshead and Campbell to be statements showing the correct and true condition of the business affairs and financial condition of said Southern Hardware and Supply Company, but which statements, so prepared and to be prepared, and so to be caused to be prepared, and so caused to be prepared by said Hardaway Young, alias H. Young, in truth and in fact, were not to and did not show the true, actual condition of the business affairs and financial condition of the said Southern Hardware and Supply Company, but were to show, and did show, that the said Southern Hardware and Supply Company had assets greatly in excess of the assets actually had and owned by the said Southern Hardware and Supply Company at the time such statements were to be made and were made, and such statements were to show, and did show, that the liabilities of the said Southern Hardware and Supply Company, at the time such statements were to be made, and were made, were much less than the true amount of the liabilities of the said Southern Hardware and Supply Company at the time such statements were to be made, and were made, and that thus such statements did not in truth and in fact show the true and actual condition of the business affairs and financial condition of the Southern Hardware and Supply Company, but falsely and fraudulently showed that the said Southern Hardware and Supply Company was in a much better financial condition that it was in fact at the time such statements were made and were to be made.

That, as a part of said scheme and artifice, the said Hardaway Young, alias H. Young, was to cause, and did cause, the said 4 firm of Hollingshead and Campbell to believe that said statements so made and to be made were true and correct statements of the business affairs and financial condition of said Southern Hardware and Supply Company, and the said Hardaway Young, alias H. Young, was to cause, and did cause, the said firm of Hollingshead and Campbell to rely upon the truth of said false and fraudulent statements of the business affairs and financial condition of said Southern Hardware and Supply Company. That the said Hardaway Young, alias H. Young, was to, and did, cause the said firm of Hollingshead and Campbell, so relying upon the truth of said false and fraudulent statements of the business affairs and financial condition of the Southern Hardware and Supply Company, to recommend to various banks, persons, firms, and corporations that such banks, persons, firms, and corporations purchase notes and loan money upon the notes of the said Southern Hardware and Supply Company.

That it was part of the said scheme and artifice to cause the said firm of Hollingshead and Campbell to believe that the said Southern Hardware and Supply Company was in a strong financial condition,

when in truth and in fact, as the said Hardaway Young, alias H. Young, then and there well knew, the said Southern Hardware and Supply Company was not then and there in a strong financial condition; that it was a part of said scheme and artifice to induce the said firm of Hollingshead and Campbell so believing that the said Southern Hardware and Supply Company was in a strong financial condition to induce various banks, persons, firms, and corporations to purchase notes and loan money upon the notes of the said Southern Hardware and Supply Company.

And the grand jurors aforesaid do further find, and present, that the said scheme and artifice to defraud was thereafter effected by the said Hardaway Young, alias H. Young, preparing and causing to be prepared various statements purporting to show the true and correct statement of the business affairs and financial condition of said Southern Hardware and Supply Company, but which statements prepared and caused to be prepared by the said Hardaway Young, alias H. Young, were false and fraudulent and well known to be false and fraudulent by the said Hardaway Young, alias H. Young, at the time the said Hardaway Young, alias H. Young, prepared and caused to be prepared the said statements of the financial condition of the said Southern Hardware and Supply Company, in this, that said various statements showed that said Southern Hardware and Supply Company had and owned assets to an amount and of a value greatly

5 in excess of the amount and value of the assets held and owned by the said Southern Hardware and Supply Company at the time such statements were made; and further in this, that said various statements showed that the liabilities of the said Southern Hardware and Supply Company at the time such statements were so made and caused to be made by the said Hardaway Young, alias H. Young, were greatly less than the true amount of the liabilities of the said Southern Hardware and Supply Company at the time such statements were made, all of which the said Hardaway Young, alias H. Young, then and there well knew; that said Hardaway Young, alias H. Young, caused such statements to be sent through the United States mail to the said Hollingshead and Campbell and represented them to be true and correct statements of the business condition and financial affairs of the said Southern Hardware and Supply Company; and the said firm of Hollingshead and Campbell believed the said statements to be true, and relying upon the truth of such statements, recommended to various banks, persons, firms, and corporations that such various banks, persons, firms, and corporations purchase *purchase* the notes and loan money upon the notes of said Southern Hardware and Supply Company; and that various banks, persons, firms, and corporations did purchase and loan money upon the notes of the said Southern Hardware and Supply Company; the names of certain of the banks, persons, firms, and corporations so loaning money upon the notes and purchasing the notes of the said Southern Hardware and Supply Company and the amounts so loaned

upon said notes of the said Southern Hardware and Supply Company being in part as follows, to wit:

New Holland National Bank of New Holland, Pennsylvania, five thousand (\$5,000.00) dollars.

Waltham National Bank, Waltham, Massachusetts, five thousand (\$5,000.00) dollars.

Security Trust and Savings Bank, Portsmouth, Oregon, ten thousand (\$10,000.00) dollars.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find and present that in and for the purpose of executing such scheme or artifice the said Hardaway Young, alias H. Young, did wrongfully and unlawfully deposit in the United States post office at Mobile, Alabama, in the county of Mobile, State of Alabama, and in the Southern Division of the Southern District of Alabama, and within the jurisdiction of this court, on or about the twenty-seventh (27th) day of June, A. D. nineteen hundred and eleven (1911), a letter addressed to Messrs. Hollingshead and Campbell, #5 Nassau Street, New York, N. Y., which letter was 6 substantially in the words and figures as follows, to wit:

MOBILE, ALA., June 27th, 1911.

Messrs. HOLLINGSHEAD AND CAMPBELL,
#5 Nassau Street, New York, N. Y.

GENTLEMEN: We have just wired you that our statement showing condition of the company May 31st was now ready and asked your advice as to sending it to you before we gave it to the agencies. We are in receipt of your telegram advising us to do so. We therefore take pleasure in enclosing herewith statement, and would be glad for you to advise us at once any suggestions you have to offer in the way of arranging it to give it to the public, and would appreciate your letting us have a prompt reply, as both Bradstreet and Dun are wanting statements for their records. We presume they have some inquiries for a new statement. We would also be glad to have your comment as to what you think of it. Since this statement was rendered we have received additional funds from you, which, together with the cash we had on hand, enables us to take advantage of all cash discounts, and there are not now any bills unpaid which are at this time subject to cash discount.

Kindly let us hear from you promptly, and we would also thank you to advise us what you think of making application now to the Citizens Central National Bank in accordance with their promise to the writer when last in New York, and also what you think of taking the matter up with the Continental National Bank of Chicago. It is the writer's opinion we ought to establish ourselves with two good banks at as early a date as possible, and think that that probably now is the opportune time. If necessary, he could go to Chicago to see them. Mr. White, credit manager of the American Steel & Wire Company, was in Mobile about 30 days ago, went into our

affairs very fully, and from the information we have, formed a very favorable opinion. The writer is of the opinion he will be of benefit to us in obtaining a line of credit from the Continental National. Mr. E. J. Buck, president of the City Bank & Trust Company, is a personal friend of the president of the Continental National and he promised the writer at such time as we wished to take the matter up with them, that he would be glad to render us any assistance that he could. We believe that he will do so. We wish you would write us fully your views on this subject, having in mind our mutual interests.

Yours, truly,

SOUTHERN HARDWARE & SUPPLY CO.,
H. Young, Prest.

Enc.

7 and which letter contained a statement and which statement was substantially in words and figures as follows, to wit:

Statement—Wholesale.

SOUTHERN HARDWARE & SUPPLY CO.,
Mobile, Ala., May 31st, 1911.

ASSETS.

Cash	\$22, 975. 00
Stock merchandise as per inventory	301, 230. 74
Accounts receivable	195, 315. 47
Notes	13, 574. 26
	\$533, 194. 47
Furniture, fixtures, etc.	11, 500. 00
Unearned interest	3, 658. 88
Live stock	2, 472. 50
Real estate	162. 05
	17, 793. 40
	\$550, 897. 90

LIABILITIES.

Notes payable	\$191, 484. 39
Accounts	41, 318. 44
	\$232, 802. 35
Capital	\$200, 000. 00
Undivided profits prior to May 31, 1910	\$100, 119. 89
Less dividend paid	15, 684. 00
	84, 446. 89
Net profit from June 1st, 1910, to May 31st, 1911	33, 648. 18
	318, 095. 07
	\$550, 897. 90

Directors: P. J. Lyons, Jno. Quill, Tom White, J. J. Young, H. Young.

Officers: H. Young, prest.; P. J. Lyons, vice president; J. J. Young, secty. and tres.

The above is a true and correct statement showing condition of Southern Hdwr. & Supply Co. at the close of business May 31st, 1911.

SOUTHERN HDWR. & SUPPLY CO.,
H. YOUNG, *Prest.*

and which said letter and said statement were then and there enclosed in a stamped envelope addressed to Messrs. Hollingshead & Campbell, #5 Nassau St., New York, N. Y., and deposited in the United States post office at Mobile, Alabama, as aforesaid, and conveyed by the Post-Office Establishment of the United States to the said Hollingshead and Campbell at New York, in the State of New York.

That said statement so enclosed in said envelop was false and fraudulent and known at the time by the said Hardaway Young, alias H. Young, to be false and fraudulent and which said statement did not correctly show the true financial condition of the said Southern Hardware and Supply Company as the said Hardaway Young, alias H. Young, then and there well known, in this, to wit: That the said statement showed among the assets of the said Southern Hard-

ware and Supply Company, that the said Southern Hardware
8 and Supply Company had a stock of merchandise as per in-
ventory valued at three hundred and one thousand two hundred
thirty-nine dollars and seventy-four cents (\$301,239.74), when in
truth and in fact the stock of merchandise of the said Southern
Hardware and Supply Company, as per the inventory of the said
company, was worth much less than the said sum, and was worth a
large sum, to wit, eighty thousand dollars (\$80,00.00) less than the
said sum of three hundred and one thousand two hundred and thirty-
nine dollars and seventy-four cents (\$301,239.74), and further in this,
that the total assets of the said Southern Hardware and Supply
Company at the time said statement was made were worth the sum
of five hundred fifty thousand eight hundred ninety-seven dollars
and ninety cents (\$550,897.90), when, in truth and in fact, as the said
Hardaway Young, alias H. Young, then and there well known, all of
the assets of the said Southern Hardware and Supply Company were
worth a much less sum, to wit, not exceeding the sum of five hundred
thousand dollars (\$500,000); and further in this, that said statement
shows the notes payable and accounts payable of the said South-
ern Hardware and Supply Company, at the time said statement was
made, amounted to the sum of two hundred thirty-two thousand
eight hundred two dollars and eighty-three cents (\$232,802.83), when,
in truth and in fact, as the said Hardaway Young, alias H. Young,
then and there well knew, the notes payable and accounts payable of
the said Southern Hardware and Supply Company at the time said
statement was made amounted to a much larger sum, to wit, at least
the sum of two hundred eighty-two thousand dollars (\$282,00.00).

Wherefore the grand jurors aforesaid, upon their oaths aforesaid,
do find and present that the said Hardaway Young, alias H. Young,
at the time and place aforesaid, having devised, and intending to

device, a scheme and artifice to defraud, did, for the purpose of executing such scheme and artifice to defraud, place, and cause to be placed, the letter hereinbefore set forth in the United States post office at Mobile, Alabama, to be sent and delivered, and was sent and delivered, by the Post-Office Establishment of the United States, as hereinbefore set forth, against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided.

And the grand jurors of the United States, chosen, elected, and sworn, in and for the southern division of the southern district of Alabama, upon their oaths do find and present:

That on, to wit, the fifth day of May, A. D. 1911, within the county of Mobile, and within the southern division of the southern district of Alabama, and within the jurisdiction of this court, and before the finding of this indictment, Hardaway Young, alias H. Young, whose name other than is herein stated is unknown to this grand jury, did then and there devise and intend to devise a scheme and artifice for obtaining moneys, goods, and chattels, by means of false and fraudulent representations and promises, from various banks, persons, firms, and corporations to this grand jury unknown, and particularly such banks, persons, firms, and corporations as might be thereafter induced by the said Hardaway Young, alias H. Young, through the firm of Hollingshead and Campbell (said firm of Hollingshead and Campbell relying in good faith upon false and fraudulent statements and representations made and to be made by the said Hardaway Young, alias H. Young, respecting the business affairs and financial condition of the Southern Hardware and Supply Company, a corporation engaged in the mercantile business at Mobile, Alabama), to purchase or loan money upon the notes of the said Southern Hardware and Supply Company, a corporation out of their's, the said bank's, person's, firm's, and corporation's moneys, goods, and chattels, which said scheme and artifice for obtaining moneys, goods, and chattels by means of false and fraudulent representations and promises was substantially as follows:

The said Hardaway Young, alias H. Young, was then and there the president of the said Southern Hardware and Supply Company, a corporation engaged in the mercantile business at Mobile, Alabama, in said division and district. The said Hardaway Young, alias H. Young, desired to obtain loans of money for the said Southern Hardware and Supply Company, and to that end entered into negotiations with said firm of Hollingshead and Campbell, of New York City, which firm was then and there engaged in the money-brokerage business in the city of New York, State of New York, and in the business of inducing the banks, persons, firms, and corporations to purchase and loan money upon the notes and commercial paper of vari-

10 ous persons, firms, and corporations engaged in the mercantile business. The purpose and intent of such negotiations so entered into by the said Hardaway Young, alias H. Young, with said firm of Hollingshead and Campbell was to induce and cause the said firm of Hollingshead and Campbell to sell and dispose of notes of said Southern Hardware and Supply Company and to obtain money and credit for said Southern Hardware and Supply Company upon the notes and other evidences of indebtedness of the Southern Hardware and Supply Company. The said Hardaway Young, alias H. Young, was then and there the president of the said Southern Hardware and Supply Company and was then and thereto authorized to cause to be prepared financial statements and statements of the business affairs and financial condition of the said Southern Hardware and Supply Company, and was further authorized to sign and endorse notes of the said Southern Hardware and Supply Company.

The said grand jurors do further find and present that it was then and there a part of the aforesaid scheme and artifice for obtaining moneys, goods, and chattels by means of false and fraudulent representations and promises; that the said Hardaway Young, alias H. Young, for the purpose of inducing the said firm of Hollingshead and Campbell to recommend to various banks, persons, firms, and corporations that said banks, persons, firms, and corporations purchase notes executed and to be executed by said Southern Hardware and Supply Company and for the purpose of inducing the said firm of Hollingshead and Campbell to sell and dispose of notes executed and to be executed by said Southern Hardware and Supply Company and for the purpose of inducing the said firm of Hollingshead and Campbell to cause and persuade and influence various banks, persons, firms, and corporations to loan money upon notes executed and to be executed by the Southern Hardware and Supply Company, was to and did, for the purpose aforesaid, prepare and cause to be prepared and sent by and through the United States mail false and fraudulent statements of the business affairs and financial condition of the said Southern Hardware and Supply Company, which the said Hardaway Young, alias H. Young, was to and did represent to the said Hollingshead and Campbell to be statements showing the correct and true condition of the business affairs and financial condition of said Southern Hardware and Supply Company, but which statements so prepared and to be prepared and so to be caused to be prepared and so caused to be prepared by said Hardaway Young, alias H. Young, in truth and in fact were not to and did not show the true, actual condition of the business affairs and financial condition

11 of the said Southern Hardware and Supply Company, but were to show and did show that the said Southern Hardware and Supply Company had assets greatly in excess of the assets actually had and owned by the said Southern Hardware and Supply Company at the time such statements were to be made and were made,

and such statements were to show and did show that the liabilities of the said Southern Hardware and Supply Company at the time such statements were to be made and were made were much less than the true amount of the liabilities of the said Southern Hardware and Supply Company at the time such statements were to be made and were made, and that thus such statements did not in truth and in fact show the true and actual condition of the business affairs and financial condition of the Southern Hardware and Supply Company, but falsely and fraudulently showed that the said Southern Hardware and Supply Company was in a much better financial condition than it was in fact at the time such statements were made and were to be made.

That as a part of said scheme and artifice the said Hardaway Young, alias H. Young, was to cause and did cause the said firm of Hollingshead and Campbell to believe that said statements so made and to be made were true and correct statements of the business affairs and financial condition of said Southern Hardware and Supply Company, and the said Hardaway Young, alias H. Young, was to cause and did cause the said firm of Hollingshead and Campbell to rely upon the truth of said false and fraudulent statements of the business affairs and financial condition of said Southern Hardware and Supply Company; that the said Hardaway Young, alias H. Young, was to and did cause the said firm of Hollingshead and Campbell, so relying upon the truth of said false and fraudulent statements of the business affairs and financial condition of the Southern Hardware and Supply Company, to recommend to various banks, persons, firms, and corporations that such banks, persons, firms, and corporations purchase notes and loan money upon the notes of the said Southern Hardware and Supply Company.

That it was part of the said scheme and artifice to cause the said firm of Hollingshead and Campbell, so believing that the said Southern Hardware and Supply Company was in a strong financial condition, when in truth and in fact, as the said Hardaway Young, alias H. Young, then and there well knew the said Southern Hardware and Supply Company was not then and there in a strong financial condition; that it was a part of said scheme and artifice to induce the said firm of Hollingshead and Campbell to believe that

12 the said Southern Hardware and Supply Company was in a strong financial condition to induce various banks, persons, firms, and corporations to purchase notes and loan money upon the notes of the said Southern Hardware and Supply Company.

And the grand jurors aforesaid do further find and present, that the said scheme and artifice for obtaining moneys, goods, and chattels was thereafter effected by the said Hardaway Young, alias H. Young, preparing and causing to be prepared various statements purporting to show the true and correct statement of the business affairs and financial condition of said Southern Hardware and Supply Company, but which statements, so prepared and caused to be

prepared by the said Hardaway Young, alias H. Young, were false and fraudulent, and well known to be false and fraudulent by the said Hardaway Young, alias H. Young, at the time the said Hardaway Young, alias H. Young, prepared and caused to be prepared the said statements of the financial condition of the said Southern Hardware and Supply Company, in this, that said various statements showed that said Southern Hardware and Supply Company had and owned assets to an amount and of a value greatly in excess of the amount and value of the assets held and owned by the said Southern Hardware and Supply Company at the time such statements were made, and further in this, that said various statements showed that the liabilities of the said Southern Hardware and Supply Company at the time such statements were so made and caused to be made by the said Hardaway Young, alias H. Young, were greatly less than the true amount of the liabilities of the said Southern Hardware and Supply Company at the time such statements were made, all of which the said Hardaway Young, alias H. Young, then and there well knew; that said Hardaway Young, alias H. Young, caused said statements to be sent through the United States mail to the said Hollingshead and Campbell, and represented them to be true and correct statements of the business condition and financial affairs of the said Southern Hardware and Supply Company; and the said firm of Hollingshead and Campbell believed the said statements to be true, and, relying upon the truth of such statements, recommended to various banks, persons, firms, and corporations that such various banks, persons, firms, and corporations purchase the notes and loan money upon the notes of said Southern Hardware and Supply Company; and that various banks, persons, firms, and corporations did purchase and loan money upon the notes of the said Southern Hardware and Supply Company; the names of certain of the banks, persons, firms, and corporations so loaning money upon the notes and purchasing the notes of the said Southern Hardware and Supply

13 Company and the amounts so loaned upon said notes of the said Southern Hardware and Supply Company being in part as follows, to wit:

New Holland National Bank of New Holland, Pennsylvania, five thousand (\$5,000.00) dollars.

Waltham National Bank, Waltham, Massachusetts, five thousand (\$5,000.00) dollars.

Security Trust and Savings Bank, Portsmouth, Oregon, ten thousand (\$10,000.00) dollars.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find and present that in and for the purpose of executing such scheme or artifice the said Hardaway Young, alias H. Young, did wrongfully and unlawfully deposit in the United States post office at Mobile, in the county of Mobile, State of Alabama, and in the Southern Division of the Southern District of Alabama, and within the jurisdiction of this court, on or about the twenty-seventh

(27th) day of June, A. D. nineteen hundred and eleven (1911), a letter addressed to Messrs. Hollingshead and Campbell, #5 Nassau Street, New York, N. Y., which letter was substantially in the words and figures as follows, to wit:

MOBILE, ALA., June 27th, 1911.

Messrs. HOLLINGSHEAD AND CAMPBELL,

#5 Nassau St., New York, N. Y.

GENTLEMEN: We have just wired you that our statement showing condition of the company May 31st was now ready and asked your advice as to sending it to you before we gave it to the agencies. We are in receipt of your telegram advising us to do so. We therefore take pleasure in enclosing herewith statement and would be glad for you to advise us at once any suggestions you have to offer in the way of arranging it to give it to the public and would appreciate your letting us have a prompt reply, as both Bradstreet and Dun are wanting statements for their records. We presume that they have some inquiries for a new statement. We would also be glad to have your comment as to what you think of it. Since this statement was rendered we have received additional funds from you, which, together with the cash we had on hand, enables us to take advantage of all cash discounts, and there are not now any bills unpaid which are at this time subject to cash discount.

Kindly let us hear from you promptly, and we would also thank you to advise us what you think of making application now 14 to the Citizen's Central National Bank in accordance with their promise to the writer when last in New York, and also what you think of taking the matter up with the Continental National Bank of Chicago. It is the writer's opinion we ought to establish ourselves with two good banks at as early a date as possible, and think that probably now is the opportune time. If necessary, he could go to Chicago to see them. Mr. White, credit manager of the American Steel & Wire Company, was in Mobile about 30 days ago, went into our affairs very fully, and from the information we have formed a very favorable opinion. The writer is of the opinion that he will be of benefit to us in obtaining a line of credit from the Continental National. Mr. E. J. Buck, president of the City Bank & Trust Company, is a personal friend of the president of the Continental National and he promised the writer at such time as we wished to take the matter up with them that he would be glad to render us any assistance that he could. We believe that he will do so. We wish you would write us fully your views on this subject, having in mind our mutual interests.

Yours, truly,

SOUTHERN HARDWARE & SUPPLY CO.,
H. YOUNG, Pres.

Enc.

and which letter contained a statement, and which statement was substantially in words and figures as follows, to wit:

Statement—Wholesale.

SOUTHERN HARDWARE & SUPPLY CO.,
Mobile, Ala., May 31st, 1911.

ASSETS.

Cash	\$22, 975. 00
Stock merchandise as per inventory	301, 230. 74
Accounts receivable	195, 315. 47
Notes	13, 574. 30
	<hr/>
Furniture, fixtures, etc.	11, 500. 00
Unearned interest	3, 656. 86
Live stock	2, 472. 50
Real estate	162. 05
	<hr/>
	17, 783. 43
	<hr/>
	\$550, 897. 90

LIABILITIES.

Notes payable	\$191, 484. 39
Accounts	\$1, 318. 44
	<hr/>
Capital	\$200, 000. 00
Undivided profits prior to May 31, 1910	\$100, 110. 89
Less dividend paid	15, 004. 00
	<hr/>
Net profit from June 1st, 1910, to May 31st, 1911	84, 446. 89
	<hr/>
	33, 648. 16
	<hr/>
	318, 066. 07
	<hr/>
	\$550, 897. 90

15 Directors: P. J. Lyons, Jno. Quill, Tom White, J. J. Young, H. Young.

Officers: H. Young, pres.; P. J. Lyons, vice president; J. J. Young, secy. and trea.

The above is a true and correct statement showing condition of Southern Hdwr. & Supply Co. at the close of business May 31st, 1911.

SOUTHERN HDWR. & SUPPLY CO.,
H. YOUNG, Pres.

and which said letter and said statement was then and there enclosed in a stamped envelope addressed to Messrs. Hollingshead and Campbell, #5 Nassau St., New York, N. Y., and deposited in the United States Post Office at Mobile, Alabama, as aforesaid, and conveyed by the Post Office establishment of the United States to the said Hollingshead and Campbell at New York, in the State of New York.

The said statement so enclosed in said envelope was false and fraudulent and known at the time by the said Hardaway Young alias H. Young to be false and fraudulent, and which said statement did not correctly show the true financial condition of the said Southern Hardware and Supply Company as the said Hardaway Young

alias H. Young then and there well knew, in this, to wit: That the said statement showed among the assets of the said Southern Hardware and Supply Company that the said Southern Hardware and Supply Company had a stock of merchandise, as per inventory, valued at three hundred and one thousand two hundred thirty-nine dollars and seventy-four cents (\$301,239.74), when, in truth and in fact, the stock of merchandise of the said Southern Hardware and Supply Company, as per the inventory of the said company, was worth much less than the said sum, and was worth a large sum, to wit, eighty thousand dollars (\$80,000.00) less than the said sum of three hundred and one thousand two hundred thirty-nine dollars and seventy-four cents (\$301,239.74); and further in this, that the total assets of the said Southern Hardware and Supply Company at the time said statement was made were worth the sum of five hundred fifty thousand eight hundred ninety-seven dollars and ninety cents (\$550,897.90), when, in truth and in fact, as the said Hardaway Young alias H. Young then and there well knew, all of the assets of the said Southern Hardware and Supply Company were worth a much less sum, to wit, not exceeding the sum of five hundred thousand dollars (\$500,000.); and further in this, that said statement shows the notes payable and accounts payable of the said Southern

Hardware and Supply Company, at the time said statement
16 was made, amounted to the sum of two hundred thirty-two thousand eight hundred and two dollars and eighty-three cents (\$232,802.83), when, in truth and in fact, as the said Hardaway Young alias H. Young then and there well knew, the notes payable and accounts payable of the said Southern Hardware and Supply Company at the time said statement was made amounted to a much larger sum, to wit, at least the sum of two hundred eighty-two thousand dollars (\$282,000.00).

Wherefore the grand jurors aforesaid, upon their oaths aforesaid, do find and present, that the said Hardaway Young, alias H. Young, at the time and place aforesaid, having devised, and intending to devise, a scheme and artifice for obtaining moneys, goods, and chattels by means of false and fraudulent representations and promises, did, for the purpose of executing such scheme and artifice to obtain moneys, goods, and chattels by means of false and fraudulent representations and promises, place, and cause to be placed, the letter hereinbefore set forth in the United States post office at Mobile, Alabama, to be sent and delivered, and was sent and delivered, by the post office establishment of the United States, as hereinbefore set forth.

Against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided.

JAMES B. SLOAN,
United States Attorney.

(Endorsed:) No. 4233, U. S. District Court. The United States of America versus Hardaway Young, alias H. Young. Indictment

under section 215, U. S. Penal Code. A true bill. James K. Kyser, foreman. Filed in open court, June 7th, 1913. Richard Jones, clerk.

Demurrers to indictment.

In the District Court of the United States for the Southern Division of the Southern District of Alabama.

UNITED STATES
vs.
HARDAWAY YOUNG.

Comes the defendant and demurs, separately, to each count of the indictment upon the ground:

1. That it fails to charge any offense.
2. Because it is indefinite, uncertain, and insufficient in this, that it does not set forth facts sufficient to show the scheme or artifice to defraud.
- 17 3. Because it merely alleges that the defendant desired to and borrowed money for a corporation in which he was an officer, but fails to allege that the said corporation was insolvent, or that there was no intention to repay said loans, or that they were in fact not paid.
4. Because it shows on its face that said corporation was, at the time, solvent, and, from all that appears therefrom, repaid said loans and could have secured same, regardless of such representations.
5. Because it does not appear that any credit was extended the said Southern Hardware and Supply Company because of said representations, but because of the recommendations of Hollingshead & Campbell.
6. Because it fails to show that there was any motive of gain on the part of the defendant in making the alleged false representations.

WEBB & McALPINB,
As Attorneys for Defendant.

Filed June 17, 1913. Richard Jones, clerk.

Opinion.

District Court of the United States for the Southern District of Alabama.

UNITED STATES
vs.
HARDAWAY YOUNG.

On demurrers to indictment. No. 4283.

In the case of Etheredge vs. United States, 186 Fed., 437, which was a prosecution for having devised "a scheme or artifice to defraud," the Circuit Court of Appeals of this (5th) circuit said:

"It has been settled by repeated decisions that a good indictment under the statute must allege not only that the defendant has devised

a 'scheme or artifice to defraud,' but must also set out clearly what the scheme or artifice was wherein the fraud consisted, and how it was to be accomplished. Nothing in a criminal case can be charged by implication, but every fact must be clearly alleged." 186 Fed., 437; 124 U. S., 486; 157 U. S., 187.

The indictment must set forth the facts which the pleader claims constitute the alleged scheme so clearly that the court, upon an examination of the indictment, may be able to determine whether or not, under the law, the facts there stated are sufficient to support a conviction. *Miller v. United States*, 133 Fed., 341.

18 The statute under which this indictment is found is that

"Whoever having devised, or intending to devise, any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, * * * shall, for the purpose of executing such scheme or artifice, or attempting so to do, place or cause to be placed, any letter, package, or writing, etc., * * * in any post office of the United States, shall be fined, etc." Sec. 215, Criminal Code.

Elements of the offense which must be charged in the indictment under the statute and established by the proof are:

1. That the defendant devised or intended to devise a scheme or artifice to defraud.

2. That the scheme or artifice to defraud must be clearly set out and how it was to be accomplished, viz, by means of false or fraudulent pretenses, representations, or promises.

3. And for the purpose of executing such scheme or artifice, or attempting so to do, the defendant placed or caused to be placed a letter, package, or writing, etc., in a post office of the United States, to be sent or delivered by the Post Office Establishment of the United States. 186 Fed., 437; 178 Fed., 165; 116 Fed., 350; 200 Fed., 662, 907; 157 U. S., 187.

The gist of the offense is the criminal use of the mails of the United States. It is the purpose of the statute to prevent their use in aid of schemes or artifices having in view the defrauding of others of their money or property. The significant fact is the intent and purpose to deceive others and to get something for nothing. 116 Fed., 350; 152 Fed., 111; 190 Fed., 427.

"Nothing in a criminal case can be charged by implication, but every fact must be clearly alleged."

"The rule is fundamental that no essential element of the crime intended to be charged can be omitted without destroying the whole pleading." 178 Fed., 166-171; 186 Fed., 437; 124 U. S., 488.

The first count in the indictment, as I understand it, charges that the defendant devised and intended to devise a scheme and artifice to defraud various banks, persons, etc., unknown to the grand jury, and particularly such banks, persons, etc., as might be induced by the defendant, through the firm of Hollingshead and Campbell, brokers, of New York City, to purchase or loan money upon the

notes of the Southern Hardware and Supply Company "out of their said banks' and persons' moneys," which scheme and 19 artifice to defraud was as follows:

The indictment then states that the defendant was the president of the Southern Hardware and Supply Company, and desired to obtain loans of money for said company, and to that end entered into negotiations with the firm of Hollingshead and Campbell, which firm was engaged in the money brokerage business in New York and in the business of inducing banks, persons, etc., to purchase and loan money upon the notes, etc., of various persons, firms, and corporations engaged in the mercantile business; that the purpose and intent of the negotiations with Hollingshead and Campbell was to induce them to sell and dispose of notes of said Southern Hardware & Supply Company; that the defendant was authorized to cause to be prepared financial statements of the business affairs and financial conditions of the said Hardware & Supply Company and was authorized to sign and endorse notes of said company.

So far, the allegations of the indictment show no unlawful scheme. But said count of the indictment further charges that it was a part of the aforesaid scheme to defraud; that defendant, for the purpose of inducing the firm of Hollingshead and Campbell to recommend to various banks, persons, etc., that they purchase notes executed and to be executed by said Southern Hardware & Supply Co., and for the purpose of inducing said firm to sell and dispose of such notes and to cause, persuade, and influence various banks, persons, etc., to loan money on said notes, was to and did prepare and cause to be prepared and sent through the United States mail false and fraudulent statements of the business affairs and financial condition of said Southern Hardware & Supply Co., which defendant represented to Hollingshead & Campbell to be statements showing the correct and true condition of said company, but which did not show the true and actual condition of the business affairs and financial condition of said company, but falsely and fraudulently showed that said company was in much better financial condition than it was in fact at the time such statements were made. And it charges that said alleged false and fraudulent statements, which were sent to Hollingshead & Campbell, caused them to believe they were correct and true, and were to induce them to sell and dispose of said notes and to recommend, cause, persuade, and influence banks, persons, and others who loan money to purchase or loan money on said notes. There is no allegation in the indictment that the scheme was to defraud Hollingshead & Campbell by said alleged false and 20 fraudulent statements, and there is no allegation that it was any part of said scheme that said false and fraudulent statements were to be used to cause, persuade, or influence said banks, etc., to loan money on said notes or that they were sent to Hollingshead & Campbell for the purpose of being so used or that they were

so used. It is alleged that Hollingshead & Campbell were caused to rely on said statements and so relying to recommend to various banks, persons, and others that they purchase notes and loan money on notes of said Southern Hardware & Supply Company.

What I have stated is the substance of the first count of the indictment, in so far as it undertakes to set out the scheme to defraud said banks, persons, etc., mentioned. The following last five pages of said count allege the ways and means by which the scheme was sought to be effected.

But for the direct allegation in the first part of the indictment that the alleged scheme was to defraud various banks, persons, etc., out of their money, it would appear from said count that the scheme was to induce Hollingshead & Campbell, money brokers, and who were in the business of procuring purchasers or lenders of money on notes of mercantile companies, to undertake such like business for the Southern Hardware & Supply Company.

There are lawful schemes and schemes which are unlawful. A scheme may be found in any plan to get the money or property of others by deceiving them as to the substantial identity of the things which they are to receive in exchange. Schemes which have been generally punished by the courts were such as getting something for nothing, like selling worthless corporate stock; running a bucket shop under the pretense of doing real trading; financial schemes impossible of performance and with no intention of performance at the time the scheme was devised, and the like. 152 Fed., 111; 190 Fed., 427.

The first count of the indictment does not clearly set out the scheme to defraud. It fails to allege that the scheme devised to defraud said banks, etc., was by means of false or fraudulent pretenses, representation, or promises. And it fails to allege how the scheme was to be executed. It does not allege that the scheme devised was to be executed by the use of the Post Office establishment or mails of the United States.

My opinion, therefore, is that said first count of the indictment is defective and insufficient, and the demurrer thereto is sustained.

21 The second count of the indictment is subject to the same defects and objections as are found to the first count, except that the second count does allege that the scheme to defraud was by means of false and fraudulent representations and promises. It does not directly allege that the scheme to defraud was to be executed by the use of the Post Office establishment or mails of the United States. In some part of the second count it is implied in an allegation in this way: That is was a part of the said scheme that the defendant was to and did prepare statements of the business affairs and financial condition of the Southern Hardware & Supply Company, and sent the same to Hollingshead & Campbell to induce them to do certain things, etc. The gist of the offense is the use of the United States mails in the execution of the scheme, or in attempting so to do. It is not an unlawful scheme unless the use of the mails

was a part of the scheme, and the indictment must affirmatively allege every fact necessary to constitute the offense sought to be charged, that the court may see that an unlawful scheme has been devised. It is alleged that said statements were false and fraudulent, and that they were not sent through the mail to Hollingshead & Campbell, from which it might be implied that such was a part and the intent of the scheme.

But no essential or material fact in a criminal case can be found by implication or intendment. See authorities cited. There is no allegation that said alleged false and fraudulent statements were to be used by Hollingshead & Campbell to induce said banks, persons, etc., to loan their money on the said notes, or that said banks and money lenders, etc., had seen said statements, or had knowledge of them and their contents, or that they had been sent to said Hollingshead & Campbell to be used with said banks and other money lenders to deceive and induce them to purchase or loan their money on said notes. It is alleged that the said statements were sent by mail to Hollingshead & Campbell to induce them to cause, persuade, and influence various banks, persons, etc., to loan their money on said notes, from which it may be implied that a part of the scheme was that said statements were to be used to cause, induce, or influence said banks, etc., to loan their money on notes of Southern Hardware & Supply Co., or in attempting to do so, but there is no direct allegation to that effect.

22 While my opinion is that the second count is better than the first, it is insufficient in the particulars mentioned. The demurrs to it are sustained.

HARRY T. TOULMIN, *Judge.*

MOBILE, ALABAMA, July 30th, 1913.

Filed July 30, 1913. Richard Jones, clerk.

Order sustaining demurrs to indictment.

Wednesday, July 30th, A. D. 1913. Present: Honorable Harry T. Toulmin, judge presiding.

THE UNITED STATES OF AMERICA
versus
HARDAWAY YOUNG. } No. 4233. Indictment under sec-
tion 215, Criminal Code of the
United States.

This case having been argued and submitted on the demurrs to the indictment, and the same being duly considered by the court, the court is of opinion that said demurrs are well taken; it is, therefore, ordered and adjudged by the court that said demurrs be, and the same are hereby, sustained and that said indictment be, and the same is hereby, quashed. It is further ordered that the defendant be, and is hereby, held under appearance bond on file to answer another indictment if presented.

Assignment of errors.

In the District Court of the United States for the Southern District of Alabama.

UNITED STATES
vs.
HAMAWAY YOUNG. } No. 4283.

Now comes the United States and files the following assignment of errors upon which it will rely upon it prosecution of a writ of error in the above-entitled cause, to the Supreme Court of the United States, that is to say:

1. The court erred in sustaining the first ground of the demurrer to the first count of the indictment.
2. The court erred in sustaining the second ground of the demurrer to the first count of the indictment.
3. The court erred in sustaining the third ground of the demurrer to the first count of the indictment.
- 23 4. The court erred in sustaining the fourth ground of the demurrer to the first count of the indictment.
5. The court erred in sustaining the fifth ground of the demurrer to the first count of the indictment.
6. The court erred in sustaining the sixth ground of the demurrer to the first count of the indictment.
7. The court erred in sustaining the first ground of the demurrer to the second count of the indictment.
8. The court erred in sustaining the second ground of the demurrer to the second count of the indictment.
9. The court erred in sustaining the third ground of the demurrer to the second count of the indictment.
10. The court erred in sustaining the fourth ground of the demurrer to the second count of the indictment.
11. The court erred in sustaining the fifth ground of the demurrer to the second count of the indictment.
12. The court erred in sustaining the sixth ground of the demurrer to the second count of the indictment.
13. Because the court, by its ruling on the demurrers, interpreted the law (section 215, Penal Code), under which this indictment was found, as requiring that, in order to constitute said crime that scheme devised must have contemplated the use of the mails or the post-office establishment of the United States in the execution thereof.
14. Because the court, by its ruling on the demurrers, interpreted the statute under which the indictment was found as requiring that the indictment must allege that the scheme to defraud was to be executed by the use of the post-office establishment or mails of the United States.
15. Because the court, by its ruling on the demurrers, construed the statute under which the indictment was found as requiring that

in order that a scheme to defraud be unlawful the use of the mails must be a part of the scheme at the time the scheme was formed.

16. Because the court erred in holding that a scheme to defraud is not prohibited by section 215 of the Penal Code of the United States, unless the use of the mails was a part of said scheme when the scheme was formed, and unless the use of the mails was contemplated by the defendant at the time the scheme was formed.

JAMES B. SLOAN, U. S. Attorney.

Filed August 29, 1913. Richard Jones, clerk.

24

Petition for writ of error.

In the District Court of the United States for the Southern District of Alabama.

UNITED STATES
vs.
HARDAWAY YOUNG. | No. 4233.

The United States, feeling itself aggrieved by the judgment of this court on the demurrer to the indictment in the above-entitled cause entered on the 30th day of July, 1913, comes now, by J. B. Sloan, United States attorney for the Southern District of Alabama, and petitions said court for an order allowing the United States to prosecute a writ of error to the honorable the Supreme Court of the United States in that behalf made and provided, and particularly the act of March 2, 1907, chapter 2564, 34 Stat. at Large, 1246.

And your petitioner will ever pray.

JAMES B. SLOAN, U. S. Attorney.

Filed August 29, 1913. Richard Jones, clerk.

Order allowing writ of error.

Friday, August 29th, A. D. 1913. Present: Honorable Harry T. Toulmin, judge presiding.

THE UNITED STATES OF AMERICA | No. 4233. Indictment under section 215, Criminal Code of the
versus
HARDAWAY YOUNG. | United States.

This case coming on to be heard on the petition of the United States praying allowance of a writ of error to the Supreme Court of the United States as provided by the act of March 2, 1907, 24 Statutes at Large, 1246, from the ruling and order of the court made and entered herein on July 30, 1913, sustaining the demurrers to the indictment, and it appearing that assignment of errors have

been duly filed, it is ordered by the court that said petition be and the same is hereby granted, and that said writ of error be and the same is hereby allowed.

Citation.

UNITED STATES OF AMERICA, *ss.*:

The President of the United States of America to Hardaway Young and Webb & McAlpine, his attorneys of record, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at the city of Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error sued out and filed in the clerk's office of the District Court of the United States for the Southern District of Alabama, at Mobile, Alabama, in criminal case No. 4233, wherein the United States is plaintiff in error, and you, said Hardaway Young, are defendant in error, to show cause, if any there be, why the judgment rendered against the said United States, as in said writ of error mentioned, should not be corrected, and full and speedy justice done to the parties in that behalf.

Witness, Honorable Harry T. Toulmin, judge of the District Court of the United States for the Southern District of Alabama, and the seal of said court at the city of Mobile, Alabama, this, the 29th day of August, A. D. 1913.

[SEAL.]

HARRY T. TOULMIN,

U. S. District Judge for the Southern District of Alabama.

Attest:

RICHARD JONES,

Clerk U. S. District Court

For the Southern District of Alabama.

We hereby accept service of the above citation, and acknowledge receipt of a copy thereof this 3rd day of September, A. D. 1913.

HARDAWAY YOUNG, *Defendant in Error,*
By WEBB & MCALPINE, *His Attorneys of Record.*

Filed September 3, 1913. Richard Jones, clerk.

Writ of error.

THE UNITED STATES OF AMERICA, *ss.*:

The President of the United States of America to the honorable the judge of the District Court of the United States for the Southern District of Alabama, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said district court, before you, between the United States, plaintiff, and Hardaway Young, defendant, a manifest error hath happened, to the great damage of the said

United States, plaintiff, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., within thirty days from the date hereof, in the said Supreme Court of the United States, to be then and there held, and the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, Honorable Harry T. Toulmin, judge of the District Court of the United States for the Southern District of Alabama, and the seal of said court at the city of Mobile, Alabama, this the 29th day of August, A. D. 1913.

[SEAL.]

RICHD. JONES,
*Clerk U. S. District Court,
for the Southern District of Alabama.*

HARRY T. TOULMIN,
U. S. District Judge for the Southern District of Alabama.

27
Certificate.

UNITED STATES OF AMERICA.

District Court of the United States for the Southern District of Alabama.

I, Richard Jones, clerk of said court, do hereby certify that the foregoing twenty-six pages, numbered 1 to 26, contain a true and correct transcript of the record and proceedings had and taken in said court in criminal case No. 4233, The United States of America versus Hardaway Young, and that the same constitutes the return to the writ of error sued out in said case by the United States of America, which writ of error is page 26 of this transcript.

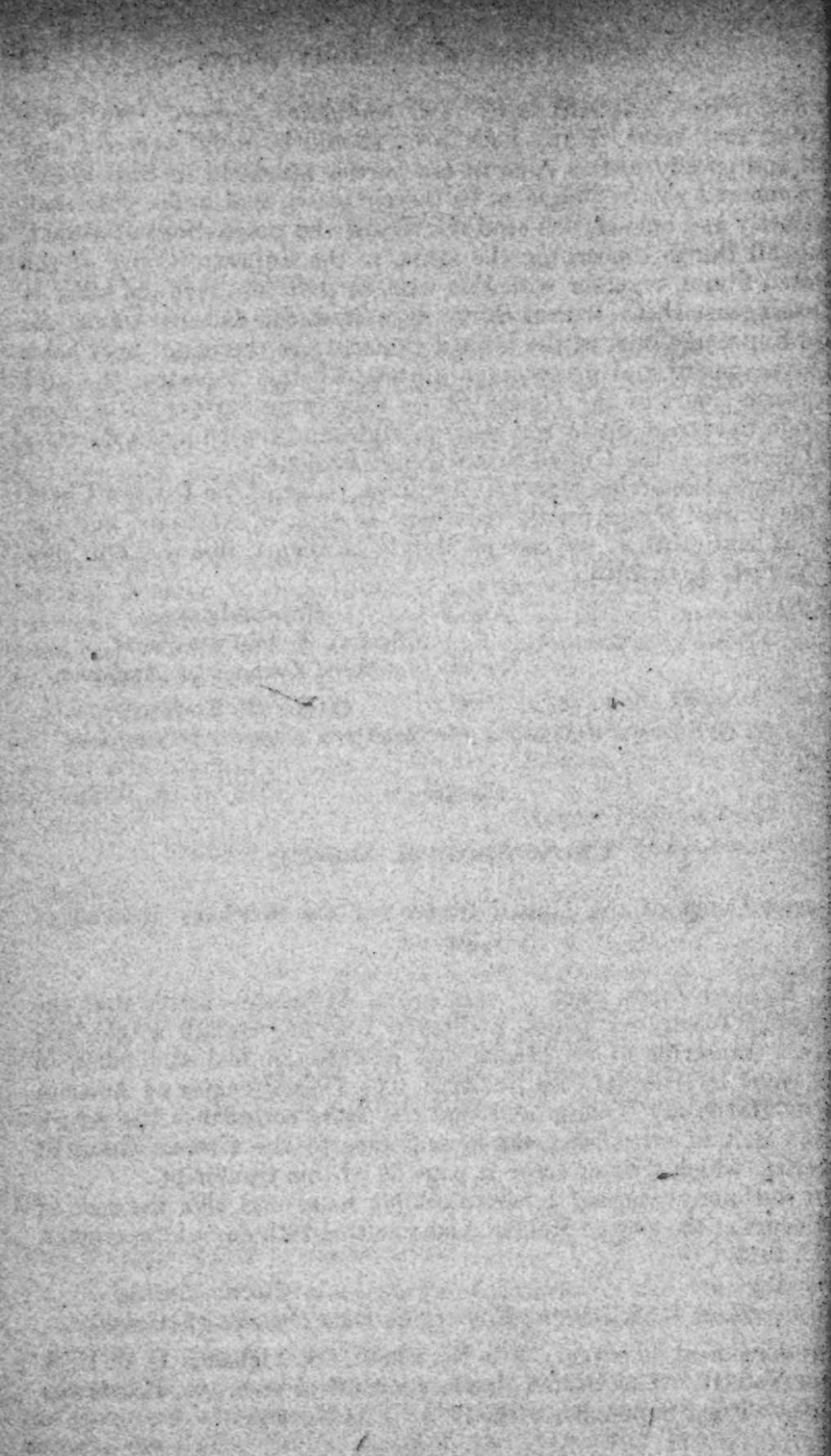
In testimony whereof I hereto set my hand and affix the seal of said court at the city of Mobile, Alabama this 18th day of September, A. D. 1913.

[SEAL.]

RICHD. JONES,
Clerk U. S. District Court, Southern District of Alabama.

(Indorsement on cover:) File No. 23,861. S. Alabama, D. C. U. S. Term No. 710. The United States, plaintiff in error, vs. Hardaway Young. Filed September 24th, 1913. File No. 23861.





In the Supreme Court of the United States.

OCTOBER TERM, 1913.

THE UNITED STATES, PLAINTIFF IN ERROR, }
v. } No. 710.
HARDAWAY YOUNG.

IN ERROR TO THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

MOTION TO AMEND WRIT OF ERROR.

The Solicitor General, on behalf of the United States, respectfully moves this court that the writ of error in the above-entitled cause be amended under R. S., sec. 1005, by substituting for the *testa* clause in its present form, *i. e.*,

Witness, Honorable Harry T. Toulmin, judge of the District Court of the United States for the Southern District of Alabama, and the seal of said court at the city of Mobile, Alabama, this the 29th day of August, A. D. 1913 (R., 23);

which clause was inadvertently made part of the record in this cause, a *testa* clause in [proper form, *i. e.*,

Witness, the Honorable Edward D. White, Chief Justice of the United States, the 29th day of August, in the year of our Lord one thousand nine hundred and thirteen.

and by inserting before the signature "Harry T. Toulmin, United States district judge for the Southern District of Alabama" (R., 23), which appears at the end of said writ of error, the words "Allowed by"; and that the said amendment be inserted in and be made part of the record *nunc pro tunc*.

JOHN W. DAVIS,
Solicitor General.

OCTOBER, 1913.



In the Supreme Court of the United States.

OCTOBER TERM, 1913.

THE UNITED STATES, PLAINTIFF IN ERROR, }
v. } No. 710.
HARDAWAY YOUNG.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

MOTION BY THE UNITED STATES TO ADVANCE.

On behalf of the United States and by consent of opposing counsel, the Solicitor General moves the court to advance the above-entitled cause for oral argument.

This was a prosecution for using the mails in furtherance of a scheme to defraud in violation of section 215 of the Criminal Code.

The indictment contained two counts. The first charged the defendant, who was president of the Southern Hardware and Supply Company, a corporation engaged in the mercantile business at Mobile, Alabama, with devising a scheme to defraud various banks, persons, firms, and corporations by means of false and fraudulent statements of the financial condition of said company, to be made to the firm of Hollingshead and Campbell, of New York City, money brokers; thereby inducing that firm, in reliance on the truth of said false statements, to sell

the notes of the company to such banks, persons, firms, and corporations; that in furtherance of this scheme defendant mailed a letter addressed to Messrs. Hollingshead and Campbell, together with a false and fraudulent statement of the financial condition of the company enclosed therein. (R. 1-8.)

The second count is identical, except that it sets forth the scheme as one "for obtaining moneys, goods, and chattels by means of false and fraudulent representations and promises." (R. 8-14.)

The defendant demurred separately to each count of the indictment (R. 15), and the district court sustained the demurrer, holding both counts bad because they did not allege (1) that the use of the mails was a part of the scheme to defraud, nor (2) that the false and fraudulent statements were to be used to deceive said banks, persons, firms, and corporations in order to induce them to purchase, or loan money on, said notes. The first count was also held bad on the further ground (3) that it failed to allege that the scheme devised to defraud was by means of false or fraudulent pretenses, representations, or promises. (R. 17-19.)

The case comes here under the Criminal Appeals Act of March 2, 1907, 34 Stat. 1246, for a review of the interpretation of section 215 of the Criminal Code upon which the judgment of the district court was based.

JOHN W. DAVIS,
Solicitor General.

OCTOBER, 1913.

In the Supreme Court of the United States.

OCTOBER TERM, 1913.

THE UNITED STATES, PLAINTIFF IN ERROR,
v.
HARDAWAY YOUNG. } No. 710.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF ALABAMA.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

This is a writ of error under the Criminal Appeals Act to review a judgment of the District Court of the United States for the Southern District of Alabama. The judgment complained of sustained a defendant to both counts of an indictment found under section 215 of the Criminal Code, charging the use of the mails in furtherance of a scheme or artifice to defraud.

The court held the indictment defective for the reason, among others, that it failed to allege that the scheme devised was to be executed by the use

of the post office establishment or mails of the United States and that such intended use was a part of the scheme. The language of the court in this particular was as follows (R. 18, 19) :

The first count of the indictment does not clearly set out the scheme to defraud. It fails to allege that the scheme devised to defraud said banks, etc., was by means of false or fraudulent pretenses, representation, or promises. And it fails to allege how the scheme was to be executed. *It does not allege that the scheme devised was to be executed by the use of the post-office establishment or mails of the United States.*

My opinion, therefore, is that said first count of the indictment is defective and insufficient, and the demurrer thereto is sustained.

The second count of the indictment is subject to the same defects and objections as are found to the first count, except that the second count does allege that the scheme to defraud was by means of false and fraudulent representations and promises. *It does not directly allege that the scheme to defraud was to be executed by the use of the Post Office establishment or mails of the United States.* In some part of the second count it is implied in an allegation in this way: That it was a part of the said scheme that the defendant was to and did prepare statements of the business affairs and financial condition of the Southern Hardware & Supply

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Company, and sent the same to Hollingshead & Campbell to induce them to do certain things, etc. The gist of the offense is the use of the United States mails in the execution of the scheme, or in attempting to do so. *It is not an unlawful scheme unless the use of the mails was a part of the scheme*, and the indictment must affirmatively allege every fact necessary to constitute the offense sought to be charged, that the court may see that an unlawful scheme has been devised. It is alleged that said statements were false and fraudulent, and that they were sent through the mail to Hollingshead & Campbell, from which it might be implied that such was a part and the intent of the scheme.

ASSIGNMENTS OF ERROR.

The thirteenth, fourteenth, fifteenth, and sixteenth assignments of error all go to this ruling and charge, in substance, that the court erred in its construction of section 215 of the Criminal Code, and in holding that an indictment thereunder must allege that the use of the mails was a part of the scheme when formed and was contemplated by the defendant at the time the scheme was formed.

ARGUMENT.

Other grounds of demurrer to the indictment were assigned by the defendant and sustained by the court. This court will consider only that one

which involves the construction of the statute and gives jurisdiction upon this appeal.

United States v. Keitel, 211 U. S. 370.

United States v. Stevenson, 215 U. S. 190.

United States v. Carter, No. 722 of the present term, decided December 15, 1913.

The error of the court below was due to its failure to note the essential difference between section 5480 of the Revised Statutes and section 215 of the Criminal Code (act of Mar. 4, 1909), which succeeded it. This can be best explained by a quotation of the statutes themselves. Section 5480 of the Revised Statutes (U. S. Comp. St., 1901, p. 3696) was as follows:

If any person having devised or intending to devise any scheme or artifice to defraud, or to sell, dispose of, loan, exchange, alter, give away, or distribute, supply, or furnish, or procure for unlawful use any counterfeit or spurious coin, bank notes, paper money, or any obligation or security of the United States or of any State, Territory, municipality, company, corporation, or person, or anything represented to be or intimated or held out to be such counterfeit or spurious articles, or any scheme or artifice to obtain money by or through correspondence, by what is commonly called the "sawdust swindle," or "counterfeit money fraud," or by dealing or pretending to deal in what is commonly called "green articles," "green coin," "bills," "paper goods," "spurious treasury notes," "United States goods,"

"green cigars," or any other names or terms intended to be understood as relating to such counterfeit or spurious articles, to be effected by either opening or intending to open correspondence or communication with any person, whether resident within or outside the United States, by means of the Post Office Establishment of the United States, or by inviting such other person or any person to open communication with the person so advising or intending, shall, in and for executing such scheme or artifice or attempting so to do, place or cause to be placed, any letter, package, writing, circular, pamphlet, or advertisement in any post-office, branch post-office, or street or hotel letter-box of the United States, to be sent or delivered by the said post-office establishment, or shall take or receive any such therefrom, such person so misusing the post-office establishment shall, upon conviction, be punishable by a fine of not more than five hundred dollars and by imprisonment for not more than eighteen months, or by both such punishments, at the discretion of the court. The indictment, information, or complaint may severally charge offenses to the number of three when committed within the same six calendar months; but the court thereupon shall give a single sentence, and shall proportion the punishment especially to the degree in which the abuse of the post-office establishment enters as an instrument into such fraudulent scheme and device.

Under this statute it was necessary to charge not only that the defendants devised a scheme to defraud, but that they intended to effect this scheme by opening, or intending to open, correspondence with some other persons by means of the post office establishment, or by inciting such other persons to open communication with them, and that in carrying out such scheme they either deposited a letter or packet in the post office or took or received one therefrom. *Stokes v. United States*, 157 U. S. 187.

Section 215 of the Criminal Code, which was adopted before the commission of the offense charged in the indictment at bar, is as follows:

Whoever, having devised, or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure, for unlawful use any counterfeit or spurious coin, bank note, paper money, or any obligation or security of the United States, or of any State, Territory, municipality, company, corporation, or person, or anything represented to be or intimated or held out to be such counterfeit or spurious article, or any scheme or artifice to obtain money by or through correspondence, by what is commonly called the "sawdust swindle," or "counterfeit money fraud," or by dealing or pretending to deal in what is commonly called "green articles," "green coin," "green goods," "bills,"

"paper goods," "spurious Treasury notes," "United States goods," "green cigars," or any other names or terms intended to be understood as relating to such counterfeit or spurious articles, * * * shall, for the purpose of executing such scheme or artifice or attempting so to do, place, or cause to be placed, any letter, postal card, package, writing, circular, pamphlet, or advertisement, whether addressed to any person residing within or outside of the United States, in any post-office, or station thereof, or street or other letter box of the United States, or authorized depository for mail matter, to be sent or delivered by the post-office establishment of the United States, or shall take or receive any such therefrom, whether mailed within or without the United States, or shall knowingly cause to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such letter, postal card, package, writing, circular, pamphlet, or advertisement, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

The vital difference between the two statutes consists in the addition to section 215 of the phrase in the opening clause which we have italicized and the omission indicated by asterisks of the clause italicized in the foregoing reproduction of section 5480.

It will be seen that the later act is broader than the old law in that it is only necessary that the scheme to defraud should be devised or intended to be devised and the letter placed in the post office for the purpose of effecting such scheme or artifice, or attempting so to do. The amendment was deliberate and the legislative intent quite clear.

Ex Parte King, 200 Fed. 622.

United States v. Maxey, 200 Fed. 397.

Stockton v. United States, 205 Fed. 462.

U. S. v. Goldman, 207 Fed. 1002 (Mar. 27/11)

CONCLUSION.

The judgment below should be reversed and the case remanded for further proceedings.

JOHN W. DAVIS,

Solicitor General.

DECEMBER, 1913.

UNITED STATES *v.* YOUNG.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF ALABAMA.

No. 710. Submitted January 8, 1914.—Decided January 26, 1914.

Under § 5480, Rev. Stat., it was necessary to charge not only that a scheme to defraud was devised but that it was intended to be effected by opening or intending to open correspondence with some other person by means of the post office; under § 215 of the Criminal Code it is only necessary to charge that the scheme be devised or intended to be devised and a letter placed in the post office for the purpose of executing the scheme or attempting to do so.

THE facts, which involve the construction of § 215 of the Criminal Code, are stated in the opinion.

The Solicitor General for the United States.

There was no appearance or brief filed for defendant in error.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Indictment under § 215 of the Criminal Code charging the use of the mails in furtherance of a scheme to defraud.

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It consists of two counts to which demurrer was filed, which, in specific objections, challenged the sufficiency of the indictment. The demurrer was sustained and judgment entered quashing the indictment. The charges of the indictment, condensed, are as follows:

On the fifth of May, 1911, within the County of Mobile and the jurisdiction of the court, defendant devised a scheme and artifice to defraud various banks, persons and corporations, particularly such as could be induced through the firm of Hollingshead and Campbell, of New York City, to purchase or lend money upon the notes of the Southern Hardware & Supply Company, engaged in the mercantile business at Mobile, Alabama, and of which defendant was the president.

Hollingshead and Campbell were money brokers and engaged in the business of inducing banks, persons and corporations to purchase and lend money upon commercial paper, and it was the intention and purpose of defendant in his negotiations with said firm to induce and cause it to sell and dispose of the notes of the Hardware & Supply Company and to obtain money and credit for its notes and other evidences of indebtedness. The defendant was authorized to sign such notes and other evidences of indebtedness and to prepare statements of the financial and business condition of the company.

It was a part of the scheme for defendant to induce Hollingshead and Campbell to sell and dispose of the notes of the Hardware & Supply Company and to persuade and influence the various banks, etc., to lend money upon the notes of that company, to prepare and cause to be prepared and sent through the United States mails to Hollingshead and Campbell, false and fraudulent statements of the business affairs and financial condition of the Hardware & Supply Company, and which defendant was to, and did, represent to be statements showing the correct and true condition of the business affairs and financial condition

of the Hardware & Supply Company. These statements did not show the true condition of the company's affairs, but were to show and did show its assets to be greatly in excess of those actually had and owned by it, and its liabilities to be much less than their true amount and "falsely and fraudulently showed the company to be in a much better financial condition than it was in fact at the time such statements were made and were to be made."

Part of the scheme was to make Hollingshead and Campbell believe the statements were correct, and they did make that firm so believe, and to rely upon them, and, so relying upon their truth, to recommend the purchase of the Hardware & Supply Company's notes and the lending of money upon them, defendant knowing that that company "was not then and there in a strong financial condition."

Defendant caused the statements to be sent through the United States mails to Hollingshead and Campbell. Hollingshead and Campbell believed them, and, relying upon their truth, recommended various banks, persons and corporations to purchase the notes and lend money upon the notes of the Hardware & Supply Company. The names of certain banks and the amounts they loaned are given.

For the purpose of executing the scheme and artifice, defendant deposited in the United States post office at Mobile, Alabama, a letter, dated June 27, 1911, addressed to Hollingshead and Campbell at New York. The letter contained a statement of the financial condition of the company showing the assets, liabilities and profits of the Hardware & Supply Company. It also contained comments upon the business of the company and its relations with Hollingshead and Campbell. It was sent through the mails and delivered to the latter at New York. The letter and the statements are charged to have shown the assets of the Hardware & Supply Company to be greater

and its liabilities to be less than they actually were. And it is charged that defendant having devised a scheme and artifice to defraud, and for the purpose of their execution, placed and caused to be placed in the United States post office at Mobile, Alabama, the letter above stated, and that it was sent and delivered by the Post Office Establishment of the United States.

The second count in the indictment charges defendant with having devised "a scheme and artifice for obtaining moneys, goods, and chattels by means of false and fraudulent representations and promises from various banks, persons, firms and corporations." The manner and means are charged as in the first count.

The scheme, it will be observed, was to defraud certain banks and persons and it was to be accomplished by deception practiced on Hollingshead and Campbell, money brokers, through false statements sent to that Company through the mails, whereby they would be induced to recommend the commercial value of the notes and other evidences of indebtedness of the Southern Hardware & Supply Company, of which defendant was the president. The first count charges a scheme to defraud various banks, etc., through the representations of Hollingshead and Campbell "out of their's, the said banks', and persons', firms' and corporations' moneys, goods and chattels." In the second count the scheme is alleged to be "for obtaining moneys, goods and chattels by means of false and fraudulent representations and promises" from the various banks and persons.

Commenting on the indictment, the District Court said, "The first count of the indictment does not clearly set out the scheme to defraud. It fails to allege that the scheme devised to defraud said banks, etc., was by means of false or fraudulent pretenses, representations or promises. And it fails to allege how the scheme was to be executed. It does not allege that the scheme devised was to be exe-

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cuted by the use of the Post Office establishment or mails of the United States." The conclusion of the court was that the "said first count of the indictment" was "defective and insufficient."

Further commenting, the court said: "The second count of the indictment is subject to the same defects and objections as are found in the first count, except that the second count does allege that the scheme to defraud was by means of false and fraudulent representations and promises. It does not directly allege that the scheme to defraud was to be executed by the use of the Post Office Establishment or mails of the United States. In some part of the second count it is implied in an allegation in this way: That it was a part of the said scheme that the defendant was to and did prepare statements of the business affairs and financial condition of the Southern Hardware & Supply Company, and sent the same to Hollingshead & Campbell to induce them to do certain things, etc. The gist of the offense is the use of the United States mails in the execution of the scheme, or in attempting so to do. It is not an unlawful scheme unless the use of the mails was a part of the scheme, and the indictment must affirmatively allege every fact necessary to constitute the offense sought to be charged, that the court may see that an unlawful scheme has been devised. It is alleged that said statements were false and fraudulent, and that they were sent through the mails to Hollingshead & Campbell, from which it might be implied that such was a part and intention of the scheme." The court further said that implication of a material and essential fact could not supply the place of its direct averment, that there was no allegation that the banks and others to be defrauded had seen the statements sent Hollingshead and Campbell or had knowledge of them or of their contents or that they were intended to deceive the banks and to induce them to lend their money, except as this might be implied from

sending the statements to Hollingshead and Campbell. The court expressed the opinion that while "the second count is better than the first, it is insufficient in the particulars mentioned."

We have made these quotations from the court's opinion as the case is here by direct appeal under the Criminal Appeals Act as involving the construction of the statute and not of the indictment. And this is the contention of the Government, and that the court erred in failing to "note the essential differences between section 5480 of the Revised Statutes and section 215 of the Criminal Code (Act of March 4, 1909, c. 321, 35 Stat. 1088, 1130) which succeeded it."

Section 5480 (as amended in 1889, 3 Comp. Stat. U. S., p. 3697), provided, "If any person having devised or intending to devise any scheme or artifice to defraud, . . . to be effected by either opening or intending to open correspondence or communication with any person, whether resident within or outside the United States, by means of the Post-Office Establishment of the United States, or by inciting such other person or any person to open communication with the person so devising or intending, shall, in and for executing such scheme . . . place or cause to be placed any letter . . . in any post-office . . . to be sent or delivered by the said Post-Office Establishment, . . . such person so misusing the Post-Office Establishment shall, upon conviction, be punishable . . ."

Section 215 of the Criminal Code is as follows: "Whoever, having devised, or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, . . . shall, for the purpose of executing such scheme or artifice or attempting so to do, place . . . any letter, . . . whether addressed to any person residing within or outside the United States, in any post-

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office, to be sent or delivered by the Post-Office Establishment of the United States, shall be" punishable by fine

It is contended by the Government that these provisions are broader than those of § 5480 of the Revised Statutes, that under the latter it was necessary to charge not only a scheme to defraud was devised but that it was intended to be effected by opening or intending to open correspondence with some other person by means of the Post Office Establishment. Under § 215 of the Criminal Code it is only necessary that the scheme should be devised or intended to be devised and a letter be placed in the post office for the purpose of executing the scheme or attempting to do so. And as declaring the elements of the offense under § 215 and its distinction from an offense under § 5480 of the Revised Statutes, the following cases are cited: *Ex parte King*, 200 Fed. Rep. 622; *United States v. Maxey*, 200 Fed. Rep. 997; *Stockton v. United States* (C. C. A. Seventh Circuit), 205 Fed. Rep. 462; *United States v. Goldman*, 207 Fed. Rep. 1002.

There is a distinction between the sections, and the elements of an offense under § 215 are (a) a scheme devised or intended to be devised to defraud, or for obtaining money or property by means of false pretenses, and, (b) for the purpose of executing such scheme or attempting to do so, the placing of any letter in any post office of the United States to be sent or delivered by the Post Office Establishment. The District Court apparently overlooked the distinction between the sections and was of opinion that something more was necessary to an offense under § 215, than the averment of the scheme and its attempted execution in the manner stated. The court expressed the view, we have seen, that the indictment did not clearly set out the scheme to defraud, that it did not allege the scheme devised or attempted was by means of false or fraudulent pretenses, representations or promises, or that

the scheme was to be executed by the use of the Post Office Establishment or mails of the United States. And the court said that it was a necessary element of the offense that the false statements sent to Hollingshead and Campbell by defendant were to be used by the latter company to induce the person intended to be defrauded to purchase the notes of the Southern Hardware & Supply Company or to lend money upon them, or that such person had knowledge of the contents of the statements. It is manifest that the court considered these facts were necessary to be averred in order to constitute an offense under § 215. In this the court was in error.

Judgment reversed and cause remanded with direction to overrule the demurrer.